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EVIDENCING A REPUBLICAN FORM OF GOVERNMENT: THE INFLUENCE OF CAMPAIGN MONEY ON STATE-LEVEL ELECTIONS

Edwin Bender*

I. INTRODUCTION

The National Institute on Money in State Politics (“Institute”), located in Helena, Montana, provides insight into the forces at work in state elections by compiling comprehensive information about who funds the election campaigns of state-level candidates.¹ This detailed, highly credentialed information provides evidence for determining how we—public officials, policy experts, and the public—might think about adjusting our democratic system of government for the better at a time when most voters² in the country feel that campaign donors have irreparably corrupted the system.

While the Federal Election Commission has compiled campaign finance information for presidential and congressional candidates since 1975, information from all the state disclosure agencies wasn’t available in one place until the Institute completed its first 50-state database in 2002.³

The data reveal hard facts about elections in each state, such as the number of races that are contested; the amounts raised by winning, losing, and incumbent candidates; and who is making major and strategic donations.⁴ The data also enable comparisons of the campaign-finance patterns

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1. The National Institute on Money in State Politics makes its data available to the public at www.followthemoney.org. The donor information is compiled from contribution and expenditure reports filed by more than 16,000 candidates and committees with official disclosure agencies in each of the 50 states. The information from the more than 100,000 reports filed result in databases of nearly four million records for every two-year election cycle, documenting upward of \$3.5 billion raised by all candidates and committees involved in state legislative, judicial, statewide or ballot question elections, and major state party committees.

2. Nathaniel Persily & Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. Pa. L. Rev. 119 (2004).

3. National Institute on Money in State Politics, www.followthemoney.org/database/nationalview.phtml?l=0&f=0&y=2002&abbr=0 (accessed Jan. 22, 2013).

4. National Institute on Money in State Politics analyses, such as Peter Quist, *Monetary Competitiveness in 2009–2010 State Legislative Races*, www.followthemoney.org/press/ReportView.phtml?r=490 (July 3, 2012) and Linda Casey, *The Role of Money and Incumbency in 2009–2010 State Elections*,

of states with no contribution limits with those that have high contribution limits, low contribution limits, or public-funding programs. This allows for examination of how limits or the lack thereof may affect the number of contested races, amounts raised, and the advantages of incumbency. The detailed donor information allows further analyses of the number of contributors who give up to the maximum amount allowed by law in each individual state, how many donors give above a reporting threshold but below the maximum, and the amount given that is less than a reporting threshold.⁵ From this latter data set, a range can be calculated of the possible number of people who have given “small donations,” which are often correlated with competitive elections.⁶ From the facts, comparisons, and analyses of the campaign-finance systems in the 50 states regarding the candidates and donors, we are beginning to see patterns that can help inform larger questions confronting the country and its legal system.

Federal and state courts are now considering major questions about the campaign finance systems in the states. The Institute’s data has been cited before the United States Supreme Court on three occasions: in an amicus curiae brief in *Caperton v. A.T. Massey Coal Co., Inc.*,⁷ by Justice Souter in *Federal Election Commission v. Wisconsin Right to Life, Inc.*,⁸ and in an

www.followthemoney.org/press/ReportView.phtml?r=489 (July 3, 2012), provide overviews of data compiled in each election cycle. Contested races are those in which two candidates run for one office. Institute staff audit candidates’ contribution reports where possible to ensure totals on its website match those reported by candidates and other committees. The Institute considers contributing to be strategic in nature when it favors legislative incumbents first and winning candidates second, that is, those candidates who most likely will have a seat in legislative committee deliberations. Institute data show some organizations or PACs give upward of 90 percent of their contributions to incumbents and/or winning candidates.

5. A reporting threshold is the donation level below which donations are aggregated and reported as Unitemized Contributions. In most states, candidates are required to report contributions in more detail once a donor gives more than the reporting threshold. In Montana, for example, the reporting threshold is \$35.00. So, all donors who give \$34.99 or less to a candidate are not reported by name, and the total amount raised by a candidate below the threshold is reported in a single unitemized line item. Reporting thresholds range from \$20.00 in Colorado and Wisconsin to \$300.00 in New Jersey, with \$25.00, \$50.00, \$100.00 and \$200.00 thresholds being most common. The Campaign Disclosure Project, <http://disclosure.law.ucla.edu/> (accessed Dec. 19, 2012).

6. Michael J. Malbin, founder and executive director of the Campaign Finance Institute, and professor of political science at the State University of New York at Albany, has studied the role of small-dollar donors extensively. See The Campaign Finance Institute, www.cfinst.org/smalldonors/state.aspx (accessed Dec. 19, 2012).

7. Amicus Curiae Br. of the Brennan Ctr. for Just., *Caperton v. A.T. Massey Coal Co.*, 2009 WL 45972 (Jan. 5, 2009) (No. 08-22, 556 U.S. 868 (2009)). In *Caperton*, the Supreme Court ruled that it was unconstitutional for a state supreme court justice to sit on a case involving the financial interests of a major donor to the judge’s election campaign.

8. *Fed. Election Commn. v. Wis. Right to Life, Inc.*, 551 U.S. 449, 504 (2007) (Souter, J., dissenting). Justice Souter cited the Institute’s reports, *The New Politics of Judicial Elections, 2006* and *State Elections Overview 2004*, as evidence in his dissenting opinion.

amicus curiae brief in *Citizens United v. Federal Election Commission*.⁹ In addition, the Montana Attorney General presented the Institute's analyses in *Western Tradition Partnership, Inc. v. Attorney General of Montana*.¹⁰ Most recently, the Institute provided expert witness testimony in a challenge to Montana's contribution limits brought by American Tradition Partnership.¹¹ Justice Breyer is quoted as saying that courts have "'no scalpel to probe' each possible contribution level."¹² The Institute's data and analyses, however, are sharpening our understanding of the effects of contribution limits and informing key questions about the First Amendment and political speech.

The Institute's unique resources are also broadening and deepening reporters' coverage of: state elections; the candidates who take part; the donors who give to those candidates; and the tension that naturally results when donors' interests surface in public policy discussions.¹³ National news outlets, including *The New York Times*, *The Washington Post*, *The Wall Street Journal*, *Bloomberg Businessweek News*, *U.S. News & World Report*, *NBC News*, *CBS News*, *National Public Radio*, *USA Today*, and the *Los Angeles Times*, routinely cite the Institute and its data in national and state election stories. The Institute's website also affords local news organizations, from the *Ravalli Republic*, *Missoula Independent*, and *Billings Gazette*, to *The Dickinson Press*, *(SC) Free-Times*, and *Charleston Daily Mail*, access to information that helps inform citizens in specific districts about candidates who want to represent them and the interests that are helping them get elected. The rise of the internet is rapidly changing how news is disseminated and has spawned a new type of news outlet in the form of online news organizations and bloggers, such as *Alternet*, *Center for Public*

9. Amicus Curiae Br. of the Sunlight Found., the Natl. Inst. on Money in St. Pol., and the Ctr. for Responsive Politics, *Citizens United v. Federal Election Commn.*, 2009 WL 2365228 (July 31, 2009) (No. 08-205, 558 U.S. 310, 130 S. Ct. 876 (2010)). Additionally, Campaign Legal Center and Justice at Stake relied on Institute data in preparing their briefs to the Court.

10. Institute evidence was presented in an affidavit that was cited in the Montana Supreme Court opinion. *W. Tradition Partn., Inc. v. Atty. Gen. of Mont.*, 271 P.3d 1, 9–10 (Mont. 2011), *cert. granted, judgment rev'd sub nom. Am. Tradition Partn., Inc. v. Bullock*, 132 S. Ct. 2490 (2012) (the Court ruled in favor of Montana's ban on corporate spending in elections, overturning a previous decision by the district court).

11. *Lair v. Murry*, 846 F. Supp. 2d 1116 (D. Mont. 2012) (held that the contribution limits were unconstitutional and enjoined their enforcement). On appeal, the Ninth Circuit granted the State of Montana's motion for a stay pending appeal in *Lair v. Bullock*, 697 F.3d 1200 (9th Cir. 2012). In a one sentence memorandum opinion in *Lair v. Bullock*, 133 S. Ct. 498 (2012), the U.S. Supreme Court refused to vacate the stay: "The application to vacate the stay entered by the United States Court of Appeals for the Ninth Circuit on October 16, 2012, presented to Justice Kennedy and by him referred to the Court, is denied."

12. *Randall v. Sorrell*, 548 U.S. 230, 248 (2006).

13. The Institute maintains a daily log of press citations where the Institute's data and/or analyses were cited or staff experts were quoted. See National Institute on Money in State Politics, www.followthemoney.org/Newsroom/whos_using_data.phtml (accessed Dec. 19, 2012).

Integrity, *Investigative News Network*, *Iowa Watchdog.org*, *MyBayCity.com*, *iWatch News*, *California Watch*, and *MinnPost*. The Institute's open-access website frees reporters with limited resources from the tedious task of compiling data¹⁴ in their states so they can focus on investigations and reporting.

The curated data compiled by the Institute enables scholars who study both state elections and public policy processes new opportunities to quicken and expand their inquiries.¹⁵ Some analyses focus on the relationships between campaign-finance regulation and participation, such as the June 2010 article by Professor Thomas Stratman, "Do Low Contribution Limits Insulate Incumbents from Competition?,"¹⁶ and the 2010 collaboration between Professors Anthony J. Corrado, Michael J. Malbin, Thomas E. Mann, and Norman J. Ornstein, "Reform in an Age of Networked Campaigns: How to Foster Citizen Participation through Small Donors and Volunteers."¹⁷ Other articles focus on the links between donors and candidates, such as Professors David Lowery, Virginia Gray, and Jennifer Benz's April 2008 publication, "Understanding the Relationship Between Health PACs

14. As noted above, the Institute compiles detailed contributor information from disclosure agencies in all 50 states. To do so, its staff of more than 20 people works full time to download electronic files from the agencies and upload the information to www.followthemoney.org. While more and more disclosure is available electronically, 13 states still offer their citizens access to candidate and committee reports via paper or PDF documents. For those states, Institute staff and contractors input the information into databases that are integrated with other data. In a majority of states, the Institute must carefully track which campaign reports are filed electronically and which are not, and input the latter, to ensure that the Institute's data accurately matches the final report totals filed by candidates and other committees. The accuracy of the Institute's data has been independently verified by scholars who have used it for detailed analyses. See The Campaign Finance Institute Citizen Activist Tool, www.cfinst.org/state/CitizenPolicyTool.aspx (accessed Dec. 19, 2012). In early 2003, the Institute hired the RAND Corp. to evaluate its procedures and systems. See Rand Process Evaluation on the National Institute for Money on State Politics, www.followthemoney.org/Institute/rand.phtml (accessed Dec. 19, 2012).

15. For a sampling of scholarly articles that relied on Institute data for their analyses, see National Institute on Money in State Politics, www.followthemoney.org/research/special_topics.phtml (accessed Dec. 19, 2012). Universities whose faculty and/or students have made use of the Institute's resources include: Arizona State University, Sandra Day O'Connor College of Law; City University of New York, Baruch College School of Business; Columbia University, School of Journalism; Emory University; George Mason University, Dept. of Economics; Harvard University, Business School, Safra Center for Ethics and Investigative Reporting, School of Finance, and School of Law; Loyola Law School; New York University, School of Law and Brennan Center for Justice; Rice University, Harlan Program/State Elections; Stetson University, School of Law; UC Berkeley, Haas School of Business; University of Michigan, Dept. of Political Science; University of Missouri, School of Journalism and School of Social Sciences; University of Paderborn, Business Administration and Economics; University of Southern California, Annenberg School of Communication; and Yale Law School.

16. Thomas Stratman, *Do Low Contribution Limits Insulate Incumbents from Competition?*, 9 Election L.J. 125 (2010).

17. Anthony J. Corrado, Michael J. Malbin, Thomas E. Mann & Norman J. Ornstein, *Reform in an Age of Networked Campaigns: How to Foster Citizen Participation through Small Donors and Volunteers*, Campaign Finance Institute, www.cfinst.org/about/events/2010_01_14.aspx (Jan. 14, 2010).

and Health Lobbying in the American States,”¹⁸ or Professors Robert E. Hogan, Keith E. Hamm, and Rhonda Wrzenski’s April 2006 article, “Factors Affecting Interest Group Contributions to Candidates in State Legislative Elections.”¹⁹ Until the Institute built the first comprehensive 50-state donor database a decade ago, scholars and students of state politics and elections worked with single-state or one-dimensional data sets with narrow focuses, such as votes cast in a particular state or total contributions raised. The depth and breadth of the Institute’s data now allow multi-state, multi-election cycle analyses of multiple variables, from votes cast and totals raised to specific interest group or donor interactions with different types of candidates (i.e., incumbents, incumbent challengers, or newcomers to open seats).

National and state policy and advocacy organizations—liberal, conservative, libertarian, and many in between—use the Institute’s open-access website and data to sharpen their issue analyses and deepen their memberships’ understandings of the role money plays in elections and public policy processes.²⁰ It should come as no surprise that the Institute’s data informs the efforts of campaign-finance reform advocates. Those pressing for what has been called “Clean Money Reform,” where a state sets up a fund of public money from which qualified candidates can draw once they hit a specific threshold of qualifying contributions, have used the Institute’s data to argue that the policy has significant benefits.²¹ Others have argued for campaign reforms that provide participation incentives for more small-donation²² contributors.²³ A broader group of organizations has developed

18. David Lowery, Virginia Gray, Jennifer Benz et al., *Understanding the Relationship Between Health PACs and Health Lobbying in the American States*, available at www.followthemoney.org/press/SpecialReportView.phtml?r=318 (Apr. 3, 2008).

19. Robert E. Hogan, Keith E. Hamm & Rhonda Wrzenski, *Factors Affecting Interest Group Contributions to Candidates in State Legislative Elections*, available at www.followthemoney.org/press/SpecialReportView.phtml?r=265 (Apr. 20, 2006).

20. A sampling of reports and articles written by policy and advocacy organizations that relied on Institute data for their analyses is available at National Institute on Money in State Politics, www.followthemoney.org/research/special_topics.phtml (accessed Dec. 19, 2012). Organizations that have made use of the Institute’s resources include: AARP, ACLU, AFSCME, Alliance for Justice, American Enterprise Institute, American Lung Association, California Center for Public Health Advocacy, CATO Institute, Center for American Progress, Common Cause, Consumer Watchdog, Justice Policy Institute, Heritage Foundation, League of Women Voters, Midwest Democracy Network, OMB Watch, People for the American Way, Pew Trusts’ Center for the States, PICO National Network, Project On Governmental Oversight, Public Campaign, SEIU, Texans for Public Justice, and U.S. Public Interest Research Group.

21. Marc Breslow, Janet Groat & Paul Saba, *Revitalizing Democracy: Clean Election Reform Shows the Way Forward*, Money and Politics Implementation Project, available at www.followthemoney.org/press/Reports/200201011.pdf (Jan. 2002).

22. Small-donation contributors are generally considered to be those who make one, two, or three donations below the reporting threshold to candidates in their local districts. In theory, increases in small-donor participation can level off the advantages of those donors who make major and/or strategic donations. In Montana, Institute analyses have found that legislative candidates who raised the most in

a hybrid policy option that encourages small-dollar donors, raises contribution limits, and expands voter-education efforts.²⁴ Issue advocates battling prison privatization efforts in the states provide excellent examples of how organizations have used the Institute's early analyses²⁵ to understand the issues and, more recently, its data to build their movement.²⁶ While the Institute's campaign-finance information is important to the efforts of these groups—and those working on myriad other issues—it represents more of an exclamation point to arguments they are making about what they feel is poor public policy and how campaign money has influenced that policy.

Money's influence on elections and public policy can result in an appearance of impropriety by lawmakers in debate and voting situations.²⁷ But proving impropriety is difficult. What good data enables—data like that developed each cycle by the Institute—are different ways of correlating campaign-donor relationships with lawmakers and policy outcomes that benefit donors. But perhaps more important, quality data gives public officials, policy experts, and the public reliable information that can help them explore larger systemic policy options that can de-emphasize the role of money in our elections and emphasize voter involvement.

II. COMPETITIVENESS

Elections are at the heart of our democratic system of governing. The Institute's data offers evidence with which public officials, policy experts,

small donations won their races 67 percent of the time, an indication that the door-to-door contact required to raise these types of donations results in broad candidate support.

23. David Rosenberg, *Broadening the Base: The Case for a New Federal Tax Credit for Political Contribution*, American Enterprise Institute, available at www.followthemoney.org/press/Reports/200201013.pdf (2002).

24. Corrado, Malbin, Mann & Ornstein, *supra* n. 17.

25. See Edwin Bender, *Private Prisons, Politics & Profits*, National Institute on Money in State Politics, www.followthemoney.org/press/ReportView.phtml?r=81 (July 1, 2000) (detailing how Corrections Corporation of America and Wackenhut International began offering to take over state corrections services, saving the states taxpayer money, through enabling policy pushed by the American Legislative Exchange Council).

26. See e.g. David Shapiro, *Banking on Bondage: Private Prisons and Mass Incarceration*, ACLU, www.aclu.org/files/assets/bankingonbondage_20111102.pdf (Nov. 2, 2011); Public Campaign & PICO National Network, *Unholy Alliance: How the Private Prison Industry Is Corrupting Our Democracy and Promoting Mass Incarceration*, http://publiccampaign.org/sites/default/files/PICO_Report_Private_Prisons_Final.pdf (Nov. 15, 2011); Paul Ashton & Amanda Petterutti, *Gaming the System: How the Political Strategies of Private Prison Companies Promote Ineffective Incarceration Policies*, Justice Policy Institute, www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf (June 2011). These articles and more are available at www.followthemoney.org/Research/special_topics.phtml.

27. *But see Citizens United*, 130 S. Ct. at 908 (“[W]e now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”).

and the public can examine the relative health²⁸ of elections in their state and compare their state to others with different sets of donor regulation. For example, California was among the states with the least-competitive elections in 2010, with just 4 of 100 races competitive and 6 uncontested.²⁹ Following close behind were Georgia (14 of 236 races competitive and 154 uncontested)³⁰ and South Carolina (9 of 123 races competitive and 76 uncontested).³¹ California races almost always have two or more candidates running, but because many challengers do not raise enough money to wage effective campaigns against incumbents, the Institute considers the elections uncompetitive. In Georgia and South Carolina, data tells us that a majority of incumbents are never challenged in their re-election bids and those who do face a challenger are able to vanquish him or her through superior fundraising capabilities.³²

Comparing the median fundraising by winning candidates and losing candidates demonstrates the disparity. In California in 2010, winning legislative candidates raised a median of \$625,470, while losing candidates raised only a median of \$31,517.³³ In Georgia, winning candidates raised a median of \$50,425, and losing candidates raised \$9,478.³⁴ South Carolina winning candidates raised a median of \$30,845, and losing candidates raised \$8,604.³⁵ All three states have relatively high contribution limits for legislative candidates.³⁶

28. The Institute considers an election competitive—and thus healthy—if two candidates are competing for the position and if one does not have an overwhelming fundraising advantage. A fundraising advantage is considered “overwhelming” if one candidate raises more than twice as much money as any other candidate. The Institute created an online data-analysis tool that allows comparisons of elections in the states, “(m)c⁵⁰” for Monetary Competitiveness in 50 States, available at National Institute on Money in State Politics, www.followthemoney.org/database/graphs/competitive/index.phtml (accessed Dec. 19, 2012). Figures for contested, uncontested, and competitive races in California, Georgia, and South Carolina, as well as Maine, Arizona, and Minnesota, can be found by using the (m)c⁵⁰ tool.

29. National Institute on Money in State Politics, www.followthemoney.org/database/graphs/competitive/index.phtml (accessed Dec. 19, 2012).

30. *Id.*

31. *Id.*

32. *Id.*

33. The Institute’s PULSE scatterplot tool provides medians for winning and losing general-election candidates in all 50 states and arranges the candidates on a scatterplot graph that shows incumbents and challengers as well as whether they are Democrat or Republican. The tool also lets viewers click through to the candidate’s individual campaign-finance details. Median figures for all six states cited are available at the PULSE tool. See National Institute on Money in State Politics, *PULSE*, www.followthemoney.org/database/graphs/meta/meta.phtml (accessed Dec. 19, 2012).

34. *Id.*

35. *Id.*

36. National Conference of State Legislatures, www.ncsl.org/legislatures-elections.aspx?tabs=1116,114,800#800 (accessed Jan. 22, 2013).

At the opposite end of the competitiveness scale are Maine, with 139 of 186 races competitive in 2010 and only 8 uncontested;³⁷ Arizona, with 46 of 90 races competitive and only 16 uncontested;³⁸ and Minnesota, with 101 of 201 races competitive and only 6 uncontested.³⁹ Candidates in Maine had fundraising medians of \$5,844 for winners and \$4,914 for losers;⁴⁰ Arizona had \$32,911 for winners and \$31,488 for losers;⁴¹ and Minnesota had \$32,532 for winners and \$14,558 for losers.⁴² All three show more balanced fundraising and nation-high contested-race statistics. All three also have public financing of one type or another for their elections.⁴³

From this data, money appears to influence success in the general election and also competitiveness before the elections even begin. Evidence shows that states with high or no contribution limits have less competition in their elections compared to states that do utilize some type of public funding program.

III. CONTRIBUTION LIMITS

Contribution limits may be considered the foundation of our democracy's regulation of elections.⁴⁴ Their effect on campaigns and elections has been analyzed extensively.⁴⁵ The Institute's data provide further evidence that contribution limits lead to more robust participation in elections by low-dollar donors.

37. National Institute on Money in State Politics, www.followthemoney.org/database/graphs/competitive/index.phtml (accessed Dec. 19, 2012).

38. *Id.*

39. *Id.*

40. National Institute on Money in State Politics, www.followthemoney.org/database/graphs/meta/meta.phtml (accessed Dec. 19, 2012).

41. *Id.*

42. *Id.*

43. National Conference of State Legislatures, www.ncsl.org/legislatures-elections.aspx?tabs=1116,114,800#800 (accessed Jan. 22, 2013).

44. *See e.g. Buckley v. Valeo*, 424 U.S. 1, 58 (1976) (holding contribution limits and disclosure provisions "serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion").

45. *See e.g. Thomas Stratmann, Contribution Limits and Effectiveness of Campaign Spending*, available at www.chicagobooth.edu/research/workshops/AppliedEcon/archive/WebArchive20032004/stratman.pdf (2006) (uses the Institute's data to examine this point and concludes that "the findings are consistent with the hypothesis that contribution limits reduce the perception of corruption").

Juxtaposing a state with very few or no contribution limits,⁴⁶ like Texas with Colorado, which has low limits, illustrates this point.⁴⁷ Nearly unlimited contributing in Texas correlates to huge gaps between medians raised by winning and primarily incumbent candidates compared to that of losing candidates (\$278,215 vs. \$22,897).⁴⁸ This indicates that the advantage held by incumbent candidates in Texas—who win more than 80 percent of the time—is nearly overwhelming for challengers and may be a barrier to participation by other candidates. An analysis of the distribution of contributions by amount in Texas in 2010 shows that just 4 percent of the contributions were between \$0 and \$249, excluding unitemized small donations.⁴⁹ At the other end of the scale, fully 17 percent of the donations were made in contributions of \$50,000 or more, 42 percent was raised in amounts of \$10,000 or more, and another 32 percent was raised in amounts of \$1,000 to \$9,999.⁵⁰ Rough math—dividing the total by the limit maximum—tells us that around 3,000 separate donations were made to produce the 42 percent figure. Knowing that the donors in Texas at this level likely gave more than one donation⁵¹ leads to the conclusion that nearly half the money raised during the 2010 campaigns likely came from a few hundred donors. Colorado, in contrast, is a state with fairly low contribution limits: \$525 per individual to gubernatorial and other statewide candidates and \$200 to legislative candidates.⁵² The fundraising medians for legislative races are much closer in Colorado than in Texas, at \$42,632 for winners and \$15,193 for losers.⁵³ Fully 37 percent of the donation total came in amounts under \$249.⁵⁴ In fact, 80 percent of the donations were under

46. National Conference of State Legislatures, *Campaign Contribution Limits: An Overview*, www.ncsl.org/legislatures-elections/elections/campaign-contribution-limits-overview.aspx (updated Oct. 3, 2011).

47. Many other factors may also influence the flow of money in these states' elections.

48. National Institute on Money in State Politics, *PULSE*, www.followthemoney.org/database/graphs/meta/meta.phtml; *select* Texas 2010 (accessed Nov. 15, 2012). Incumbents represent 122 of 150 winners.

49. National Institute on Money in State Politics, *Texas 2010 Contribution Distributions*, www.followthemoney.org/database/state_overview_distribution.phtml?s=TX&y=2010 (accessed Nov. 15, 2012).

50. *Id.*

51. Texans for Lawsuit Reform, for example, gave 797 donations in 2010, giving candidates donations totaling nearly \$5.7 million: 86 percent to Republicans and 90.8 percent to winning candidates. See www.followthemoney.org/database/StateGlance/contributor.phtml?d=1005079386 (accessed Nov. 26, 2012).

52. Colorado Secretary of State, *Campaign Finance*, www.sos.state.co.us/pubs/elections/CampaignFinance/files/QuickReferenceChart.pdf (accessed Nov. 15, 2012).

53. National Institute on Money in State Politics, *PULSE*, www.followthemoney.org/database/graphs/meta/meta.phtml; *select* Colorado 2010 (accessed Nov. 15, 2012).

54. National Institute on Money in State Politics, *Colorado 2010 Campaign Contributions*, www.followthemoney.org/database/state_overview_distribution.phtml?s=CO&y=2010 (accessed Nov. 15, 2012).

\$1,000, 13 percent were in amounts between \$1,000 and \$1,999, and just 6 percent were \$2,000 or above.⁵⁵ This puts the number of donations—dividing the total by the limit maximum—at around 70,000. Very likely, many more donors were involved in Colorado because donors at the lowest levels often give just one donation per election season.

While unscientific, the juxtaposition of these two states with widely differing regulation of campaign donations illustrates the point that contribution limits play a critical role in narrowing the fundraising gap between candidates in political campaigns and increasing the participation rate by small-dollar donors.

IV. PUBLIC FUNDING

Public funding⁵⁶ of campaigns in the states has a major effect on electoral competitiveness, whether in full public funding states like Maine or Arizona, or modified public funding states like Minnesota, which provides a \$50 rebate from the state's Political Contribution Refund program⁵⁷ to those who make a contribution.⁵⁸

Arizona adopted full public funding of legislative campaigns in 1998, going into effect in the 2000 cycle. A before-and-after view of legislative campaign funding shows that the policy resulted in a dramatic shift in the electoral landscape. The greatest observable impact was seen in the amounts raised by candidates before and after public funding was established. Before public funding in 1998, medians for winners and losers were \$27,641 and \$9,545 respectively.⁵⁹ In the next election, medians shifted to \$28,400 for winners and \$18,771 for losers.⁶⁰ Ten years later, the medians

55. *Id.*

56. Twenty-four states currently have some form of public funding of elections or party committees. National Conference of State Legislatures, *Campaign Finance Reform: An Overview*, www.ncsl.org/legislatures-elections/elections/campaign-finance-an-overview.aspx#Public_Financing (updated Oct. 3, 2011); see also Benjamin J. Wyatt, *The Origins of State Public Financing of Elections*, available at www.octobernight.com/bwyatt/chap1.htm (accessed Nov. 15, 2012).

57. Campaign Finance Institute, *New Research by CFI on the States: Minnesota's \$50 Political Contribution Refunds Ended on July 1. The Refunds Helped Stimulate Unparalleled Participation by Small Donors*, www.cfinst.org/press/PReleases/09-07-08/CFI_s_Comments_on_Minnesota_s_50_Political_Contribution_Refunds.aspx (accessed Jan. 22, 2013) ("Under the PCR, individuals got rebates of up to \$50 per year (\$100 for a married couple filing jointly) for political contributions to a state or local political party or to a candidate for state office. To be eligible, a candidate had to participate in the state's system of partial public financing with spending limits. Unlike a tax credit, the PCR came back within four to six weeks, making it more effective than a tax credit for low income donors.").

58. Minnesota House of Representatives Public Information Services, *Session Daily*, www.house.leg.state.mn.us/hinfo/sessiondaily.asp?storyid=2740 (published May 16, 2011).

59. National Institute on Money in State Politics, *PULSE*, www.followthemoney.org/database/graphs/meta/meta.phtml; select Arizona 1998 (accessed Nov. 15, 2012).

60. National Institute on Money in State Politics, *PULSE*, www.followthemoney.org/database/graphs/meta/meta.phtml; select Arizona 2000 (accessed Nov. 15, 2012).

remained closer than before public funding with \$39,439 for winners and \$24,792 for losers.⁶¹ Public funding advocates⁶² argue that public funding initiatives increase candidate participation by lowering barriers to election entry, and before-and-after numbers do show an increase in the number of candidates running for office since 1998:

*Number of Candidates in Legislative Campaigns*⁶³

Arizona House	1998	2000	2002	2004	2006	2008	2010
	120	153	155	135	137	135	166
Arizona Senate	1998	2000	2002	2004	2006	2008	2010
	55	79	73	58	65	60	84

Although term limits, 2000 redistricting, a gubernatorial campaign, or a presidential campaign may have influenced the shift in candidate numbers, it appears that one factor may be public funding. While it is apparent that public funding quickly shifts the campaign-finance landscape in a state, it remains extremely difficult to know if this has an effect on the way legislation is developed, considered, and voted on.

V. IS THERE A CORRUPTING INFLUENCE?

That money influences the outcome of elections is a widely accepted theory, but how money influences the outcomes of public policy debates and votes is much less clear. In some cases it clearly does, as exposed by FBI investigations.⁶⁴ Most of the time, however, how special interests influence public policy and the spending of taxpayer dollars is a fuzzier picture that involves campaign donations, lobbyists, committee testimony, and personal relationships with lawmakers. Correlating votes to donations is fraught with problems—such as which floor vote on a bill is most meaningful—despite its satisfying simplicity. Often it is what does not happen in a legislature—votes that are never taken—that is most important. We know

61. National Institute on Money in State Politics, *PULSE*, www.followthemoney.org/database/graphs/meta/meta.phtml; *select* Arizona 2010 (accessed Nov. 15, 2012).

62. Advocates of different types of campaign-finance reform have used the Institute's data extensively. The Institute does not advocate one reform over another. It often cites the work of the Campaign Finance Institute as an example of how its comprehensive data allows robust analyses of different state campaign-finance systems and development of multiple policy options. The Institute does, however, advocate for broader transparency in elections and public policy processes.

63. National Institute on Money in State Politics, *Arizona 2010*, www.followthemoney.org/database/state_overview.phtml?y=2010&s=AZ; *change* year for earlier figures as the page displays 2010 numbers (accessed Nov. 15, 2012).

64. Mike Allen, *Treasurer's Downfall in Kickback Scheme Shakes Connecticut Political Establishment*, N.Y. Times, www.nytimes.com/1999/10/25/nyregion/treasurer-s-downfall-kickback-scheme-shakes-connecticut-political-establishment.html?pagewanted=all&src=PM (Oct. 25, 1999).

from academic research⁶⁵ that a majority of legislative decisions are made in committees that are assigned to introduce, debate, amend, re-introduce, re-debate, delay, amend, vote, and vote again on important public policy questions.

Texas and Colorado again offer good examples of the potential for the appearance of impropriety between lawmakers and campaign donors.⁶⁶ In 2011, the eleven members of the Texas House Natural Resources Committee, which considers legislation that could benefit natural resource companies, raised more than \$2.5 million in their campaigns.⁶⁷ More than \$376,775 of it came from donors in the Energy & Natural Resources sector.⁶⁸ The top 20 donors to the 2011 Committee reads like a Who's Who of international, national, and state energy companies.⁶⁹ With committee members receiving \$229,100 from oil and gas companies alone, the public may question whose interests the committee will represent in their decision-making.

In contrast, the 2011 Colorado House Agriculture, Livestock and Natural Resources Committee's members received just \$32,245 of their collective \$420,761 campaign total from the Energy and Natural Resources sector, with just \$12,700 from oil and gas industries.⁷⁰ Although the mix of industry donors is similar to that seen in Texas, as is the pattern of giving to multiple committee members, the sheer number and amounts donated are much lower. Unlike Texas, the remaining top 20 donors to the committee were donors who made \$200 or \$400 donations to one or two committee members.⁷¹

In both states, companies and individuals with an interest in policy questions being debated in these committees supported multiple candidates

65. Lynda W. Powell, *The Influence of Campaign Contributions in State Legislatures: The Effects of Institutions and Politics* 153 (U. of Mich. Press 2012) ("Campaign contributions do influence the behavior of individual legislators and, consequently, influence the policy choices of legislative institutions. This clear result can be contrasted with the conflicting, often null, findings that have emerged from a very large literature relating roll call votes to campaign donations.").

66. The Institute's Legislative Committee Analysis Tool (L-CAT) groups winning candidates by their legislative committee assignments using an Application Programming Interface with data put together by Project Vote Smart. The L-CAT displays who gave donations, and how much, to legislators sitting on a specific committee. This data snapshot reveals an intersection of those seeking to influence a policy outcome with lawmakers who decide those policy questions. National Institute on Money in State Politics, *L-CAT*, www.followthemoney.org/pvs/index.phtml (accessed Nov. 15, 2012).

67. National Institute on Money in State Politics, *L-CAT*, www.followthemoney.org/pvs/index.phtml?State=TX&c=1&CType=H&Committee=11383&Sector=0 (accessed Nov. 15, 2012).

68. National Institute on Money in State Politics, *L-CAT*, www.followthemoney.org/pvs/index.phtml?State=TX&c=1&CType=H&Committee=11383&Sector=5 (accessed Sept. 23, 2012).

69. *Id.*

70. National Institute on Money in State Politics, *L-CAT*, www.followthemoney.org/pvs/index.phtml?State=CO&c=2&CType=H&Committee=9938&Sector=5 (accessed Sept. 22, 2012).

71. National Institute on Money in State Politics, *L-CAT*, www.followthemoney.org/pvs/index.phtml?State=TX&c=1&CType=H&Committee=11383&Sector=5 (accessed Sept. 23, 2012).

on both sides of the partisan aisle, often with multiple donations, in an effort to gain the ear of committee members. While these patterns may be excused as the way the system works, the size of the donations in Texas serves as an exclamation point to concerns about a system already battling public perceptions of corruption, if not actual corruption. And these patterns are repeated time and again in state legislative committees in all 50 states, as campaign donors with legislative strategies attempt to influence public policy development at its most basic level.

VI. SMALL-DONOR REVOLUTION

Small-dollar donors, those individuals who give \$10, \$20, or \$50 donations to their favorite candidate, which are reported as lump sums by the candidates, are increasingly getting attention from national campaigns, and for good reason. They are a good indicator of broad support for candidates. Small donations to state-level candidates in the 2009–2010 election cycle amounted to more than \$84 million, which is about 3 percent of the overall total raised, and a rate that has been fairly consistent for the past five election cycles.⁷² While minimum reporting thresholds vary state-to-state, from \$25 in some states (\$35 in Montana) to \$300 in New Jersey (\$100 is common), the amount raised by candidates from small-dollar donors nonetheless represents thousands of people who are presumed voters. In Montana, for example, our analysis shows that from 2004 to 2010, state-level candidates who raised the most in small-dollar donations won their races 67 percent of the time.

The Campaign Finance Institute (“CFI”) notes that “[i]n almost every state in the country, most candidates raise the bulk of their campaign money from a few individual donors who give them \$1,000 or more, or from non-party organizations (such as corporations and labor unions), and political parties. It doesn’t have to be that way”⁷³ CFI has developed a campaign-finance reform strategy based on cultivating small-dollar donors. The strategy includes three basic methods: first, consider adjusting contribution limits; second, allow public matching funds for the first \$50 a donor gives; and third, commit to increasing the donor pool to 4 percent of the adult population.⁷⁴ CFI’s analysis shows that in Texas, for example, less than 1 percent of the voting age population donates to campaigns. Furthermore, contributions of \$1,000 or more account for more than 80 percent of

72. National Institute on Money in State Politics, *National Overview Map*, [www.followthemoney.org/database/nationalview.phtml?l=0&f=0&y=2010&abbr=1&g\[\]=16](http://www.followthemoney.org/database/nationalview.phtml?l=0&f=0&y=2010&abbr=1&g[]=16); change the year selection to see percentages for previous election cycles (accessed Nov. 15, 2012).

73. Campaign Finance Institute, *Interactive Tool for Citizen Policy Analyst*, www.cfinst.org/State/CitizenPolicyTool.aspx (accessed Nov. 15, 2012).

74. *Id.*

the money donated to candidates, while small-dollar donors account for about 1 percent. CFI's proposed changes result in an estimated rise in small-dollar donors to 29 percent of the total contributions, while donations of \$1,000 or more drop to 24 percent from 51 percent.⁷⁵ In 2010 in Colorado, small-dollar donors comprised 8 percent of the total contributed in state elections and donations of \$500 to \$999 made up 25 percent. Implementing CFI's proposal in Colorado could see small-dollar donors rise to 36 percent of the total and contributions of \$500 to \$999 drop to 17 percent.⁷⁶

Fundamental to CFI's strategy is shifting incentives for both candidates and donors. With a match on \$50 donations, candidates would have an incentive to reach out to more small-dollar donors for support, thus increasing their support base and potentially their support at the polls. That same \$50 match lets small-dollar donors feel like they have a larger stake in the outcome of the election and increases the percentage of candidates' funds that comes from small-dollar donors.⁷⁷

VII. MONTANA: A CASE STUDY

Elections in Montana are relatively inexpensive affairs,⁷⁸ offering citizens low barriers to meaningful participation but also leaving the elections vulnerable to strategic low-dollar giving or large contributions from individuals, PACs, or political party committees. In 2012, the Montana Attorney General asked the Institute to provide several analyses for use in a case⁷⁹ where the Attorney General was defending several of Montana's election laws. Those analyses gave ample evidence of a healthy representative system of government. The analyses of donation patterns over the past four election cycles reveal that Montana's elections are among the most competitive in the country, due in part to Montana's rural and inclusive

75. *Id.*

76. Campaign Finance Institute, *Interactive Tool for Citizen Policy Analyst*, www.cfinst.org/State/CitizenPolicyTool/CO.aspx (accessed Nov. 15, 2012).

77. Michael J. Malbin, Peter W. Brusoe & Brendan Glavin, *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States*, 11 *Election L.J.* 3, 9 (2012) ("[The information] shows a substantial increase not only in the proportional role of small-dollar donors but in their absolute numbers per candidate. Incumbents raised money from a 27 percent larger number of \$1–\$250 donors in the 2000s, competitive challengers went up by 56 percent and competitive open seat candidates went up by 20 percent. This, combined with the data in Table 1, provides strong support for the claim that multiple matching funds focused on small-dollar donors brought more low-dollar donors into the system, both more per similarly situated candidate as well as more overall.").

78. The average house/assembly candidate in 2010 elections, for example, raised just \$7,022, and the average senate candidate just \$14,684; totals that have increased very slowly over the past decade. National Institute on Money in State Politics, *Montana 2010*, www.followthemoney.org/database/state_overview.phtml?s=MT&y=2010 (accessed Nov. 15, 2012).

79. The first reported decision was *Lair v. Murry*, 846 F. Supp. 2d 1116 (D. Mont. 2012). See *supra* n. 11 for further proceedings.

political culture where participation is valued and its low contribution limits that allow even small-dollar donors to feel like they are making a difference.

Montana's elections are among the most competitive in the country, year after year. As explained above, the Institute considers an election competitive when at least two candidates vie for a seat and neither candidate raises more than twice as much money as his or her closest opponent. In 2010, 34 percent of the legislative races were contested in the general elections and had fairly balanced campaign donation levels.⁸⁰ The rates in other years were even higher, with 2008 at 42 percent contested, 2006 at 43 percent contested, 2004 at 38 percent, and 2002 at 37 percent contested. Between 14 percent and 25 percent of the races saw unopposed candidates in this period. This contrasts sharply with California where competitiveness by the same measures was only 4 percent in 2010 and more than 90 percent of the legislative races saw gross imbalances in finances.⁸¹

Individual donors play a significant role in funding the races for public offices in Montana. In the 2008 elections in Montana, for example, candidates reported receiving donations from more than 26,600 individuals (5 percent of voting age population) who donated a total of \$6.7 million to state candidate campaigns.⁸² That amounts to 88 percent of the total raised by candidates, with the rest coming from PACs and party committees. The comparable 2004 elections saw similar numbers, with more than 28,000 individuals giving \$6.6 million, which represented 90 percent of the total.⁸³ By contrast, in 2008 elections, 146 institutional⁸⁴ donors gave \$218,000 to candidates, amounting to only 3 percent of the total the candidates raised.⁸⁵ The comparable 2004 cycle saw 115 institutional donors giving \$161,995, which amounted to 2 percent of the money raised by candidates.⁸⁶

Many Montanans give donations below the \$35 threshold. For example, in 2010 elections, \$245,207 reported as lump sums came from thousands of small-dollar donors, accounting for 4.8 percent of the total

80. National Institute on Money in State Politics, *Tools and Features: (m)c⁵⁰*, www.followthemoney.org/database/graphs/competitive/index.phtml; *select* Montana (accessed Nov. 15, 2012).

81. National Institute on Money in State Politics, *Tools and Features: (m)c⁵⁰*, www.followthemoney.org/database/graphs/competitive/index.phtml; *select* California (accessed Nov. 15, 2012).

82. Expert Disclosure of Edwin Bender at 3, U.S. District Court, District of Montana, 6:12-cv-00012-CCL (figures updated Nov. 5, 2012). Figures may be lower than those displayed on www.followthemoney.org because they exclude non-contribution income.

83. *Id.*

84. To simplify how different types of donors are characterized across all 50 states, the Institute uses "individuals" to denote actual people who donate and "non-individual" or "institutional" donors for PACs, labor unions, corporations, and associations.

85. Bender, *supra* n. 82, at 3.

86. *Id.*

raised by candidates.⁸⁷ It is reasonable to assume that each such donor donated between \$5 and \$34.99, which means that between 7,005 and 49,041 separate small contributions were made in 2010.⁸⁸ Small-donor percentages from earlier cycles are similar.

Deeper analysis of small-dollar donors suggests that their value is greater than their donation amounts: 67 percent of the time, Montana candidates between 2004 and 2010 who raised the most from small-dollar donors won their elections, suggesting that outreach to constituents resulted in donations and votes.⁸⁹ Thus, individual donors have played a consistent, upwardly trending role in financing legislative campaigns in Montana elections, which have seen inflation-adjusted⁹⁰ total giving grow from \$2,139,081 in 2004 to \$2,647,364 in 2010, with individuals' donations representing 56 and 70 percent of those totals, respectively.⁹¹

Montana's contribution limits⁹² have shifted upward over the past decade, but the number of donors hitting those limits has remained low. For example, in general election house races in 2004 and 2006, where the candidate had no primary opponent and thus a limit of \$130, just 1,000 and 2,169 individuals, respectively, hit the limit, and just 54 and 68 PAC/organizations, respectively, hit the limit.⁹³ In 2008 and 2010, when the limit rose to \$160 in uncontested house races, 1,285 and 1,402 individuals, respectively, hit the limit. Furthermore, in 2008 and 2010, only 67 and 68 PAC/organizations, respectively, hit the limit.⁹⁴ The analysis of contribution limits is starker when primary elections are contested, and the limits rise. In 2004 and 2006, when contested house race contribution limits were \$260, just 42 and 82 individuals, respectively, hit the limits, and just 3 and 14 PACs/organizations, respectively, hit the limits.⁹⁵ In 2008 and 2010, when the limits rose to \$320, just 9 and 97 individuals, respectively, hit the limits, and 7 and 15 PAC/organizations, respectively, hit the limits.⁹⁶ Overall, the number of donors who give to candidates at the maximum level represent a small fraction of those who have given to politics in Montana, while those who give below the maximum amounts and the thousands more who give below the \$35 reporting threshold comprise a larger share of Montana's population and the vast majority of the funds raised.

87. *Id.*

88. *Id.* at 4.

89. *Id.*

90. Totals adjusted for inflation to 2010 dollars.

91. Bender, *supra* n. 82, at 4, Chart 1-1, 2004–2010 Legislative Campaign Contributions.

92. Mont. Code Ann. § 13–37–216 (2011).

93. Bender, *supra* n. 82, at 5.

94. *Id.*

95. *Id.*

96. *Id.*

While institutional donors—associations and PACs/organizations—play a smaller role than individual donors in individual candidates’ fundraising, they play a much greater role in funding Montana’s political party committees. In 2008, for example, 50 institutional donors gave \$1.7 million, or 28 percent, of the total raised by party committees, while 4,200 individual donors gave more than \$2.2 million, or 36 percent.⁹⁷ In 2004, just 37 institutional donors gave 41 percent, or \$600,580, of the total raised by parties, while 3,816 individuals gave 34 percent of the total, or \$493,575.⁹⁸ Donations from other party committees and candidates make up the difference in both cases. Donations from Montana political parties to all candidates consistently ranged from 3 to 4 percent of the total raised by candidates in each of the last four election cycles, despite increasing aggregate contribution limits, with the number of candidates who received the maximum amount from party committees ranging from 21 percent in 2004 to 32 percent in 2006.⁹⁹ Donations to state party committees peaked at \$6.1 million in 2008, an open presidential cycle, and at \$7.4 million in 2000, another open presidential cycle.¹⁰⁰ Other cycles saw far lower funding levels: just \$960,000 in 2010; \$889,000 in 2006; \$1.46 million in 2004; and \$4.2 million in 2002.¹⁰¹

While the larger political environment clearly plays a role in the state-level campaign donations to state party committees, Montana’s inexpensive races, low contribution limits, \$35 reporting threshold, and high participation rates by candidates and individual donors indicate many Montana citizens are exercising their right to participate.

VIII. CONCLUSION

Evidence compiled by the Institute over the last decade from all 50 states demonstrates that understanding the role money plays in elections and public policy development, and specifically how campaign-finances are regulated, can improve the representative forms of government in the states. If a state wants more inclusive elections—contested as well as monetarily competitive—then data shows that adjusting contribution limits or funding mechanisms can have a dramatic effect. Offering incentives for donors to participate and for candidates to seek out more small-dollar donors can also have a positive effect on both the number of candidates who run¹⁰² and the

97. *Id.* at 6.

98. *Id.*

99. Bender, *supra* n. 82, at 5.

100. *Id.* at 6.

101. *Id.*

102. Megan Moore, *Clean Elections, Arizona 2006*, National Institute on Money in State Politics, www.followthemoney.org/press/Reports/Clean_Elections_Arizona_2006.pdf (Dec. 11, 2008).

number of people who donate (and presumably vote). CFI offers one strategy to move the debate in the right direction and the hard data to support its argument.

Evidence also tells us that Montana, compared to many other states, has the underpinnings of a healthy democracy. At its most basic level, the amount of donations needed to run a competitive campaign is relatively low in most districts, so cost is not a huge barrier if someone wants to run for elective office. Small-dollar donors in Montana play a large role in campaigns. And, even with Montana's low contribution limits, donors who want to give more in donations seldom reach the maximum, indicating the comfort with levels at which campaigns are funded in Montana.

We've just begun to document the complex relationships that make up the body politic. In the future, the Institute will look more deeply at the role of lobbyists in elections and the public policy process. It will link lawmakers with legislation they introduce, delve into who drafted and who will benefit from the policy, and correlate that with campaign-donation strategies implemented by the donors. In the end, the Institute's work will hopefully produce greater accountability.